

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 09/Kol/2020
Assessment Year: 2015-16

Income Tax Officer, Ward-50(4), Kolkata	Vs	Shri Arun Prasad Mondal Uttarapan Complex DS-IV, 2nd Floor Manicktala Civic Centre Scm. VIIM Kolkata - 700054 [PAN: AEJPM8145F]
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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C.O. No. 10/Kol/2022
Assessment Year: 2015-16

Shri Arun Prasad Mondal Uttarapan Complex DS-IV, 2nd Floor Manicktala Civic Centre Scm. VIIM Kolkata - 700054 [PAN: AEJPM8145F]	Vs	Income Tax Officer, Ward-50(4), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Pradip Baksi, FCA
Revenue by :	Shri P.P. Barman, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 31/07/2023
घोषणा की तारीख /Date of Pronouncement: 06/09/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeal filed by the revenue is directed against the order of the Learned Commissioner of Income Tax (Appeals) - 15, Kolkata (hereinafter 'the Id. CIT(A)') passed u/s 250 of the Income Tax

Act, 1961 (hereinafter 'the Act'), dt. 04/10/2019, for Assessment Year 2014-15.

The assessee has filed a cross-objection being C.O. No. 10/Kol/2022, against the appeal filed by the revenue.

2. The Registry has informed that the cross-objection filed by the assessee is time barred by 590 days and application for condonation of delay has been filed and on observing that the assessee is 86 years of age and was under medical treatment for long time due to Covid 19, we condone the delay and admit the cross-objection for adjudication.

3. Brief facts of the case are that the assessee is an individual engaged in construction of housing complex. Income of Rs. 10,14,740/- declared in the e-return filed for Assessment Year 2015-16 furnished on 19/10/2016. Case selected for scrutiny through CASS followed by validly serving notice u/s 143(2) and 142(1) of the Act. During the course of assessment proceedings, the Id. Assessing Officer noticed that there is an increase in the capital of the assessee during the year by Rs.2,36,04,624/-. The assessee was asked to explain the source of the said credit. In reply, the assessee filed submission giving details of various amounts written off during the year but there was no specific reply about the alleged increase in the capita during the year. The Id. Assessing Officer was not satisfied with the submissions of the assessee and made addition of Rs.2,36,04,624/- and assessed the income of the assessee at Rs.2,46,19,364/-.

4. Aggrieved the assessee preferred appeal before the Id. CIT(A) and filed the details of amounts written off during the year. It was also submitted that the scrutiny assessment for Assessment Year 2012-13 was completed on 27/03/2015 and in order to give the effect to the said order various entries were made in the books of accounts for the year under appeal. The Id. CIT(A) examined the same and finally sustained the addition of Rs.2,12,77,375/-.

5. Aggrieved the revenue is now in appeal before this Tribunal and the assessee has raised cross-objection against the addition confirmed by the Id. CIT(A).

6. The Id. Counsel for the assessee vehemently argued referring to the written submissions before the lower authorities. He further stated that on account of the assessment proceedings for Assessment Year 2012-13, completed during the year, wherein the turnover of the assessee for Assessment Year 2012-13 was increased and the advance received from customers were adjusted against the said sales. The assessee did not challenge the addition made for Assessment Year 2012-13 and made corresponding adjustment/entries in the books for Assessment Year 2015-16 and, therefore, no addition was called for.

On the other hand, the Id. D/R supported the orders of both the lower authorities.

7. We have heard rival contentions and perused the record placed before us.

8. The Id. Assessing Officer has made the addition at Rs.2,36,04,624/- on account of increase in capital, not explained by the assessee. Though, the assessee has not furnished any financial statement for the year under appeal, but since this fact has not been challenged by the assessee before the lower authorities, it remains an admitted fact that there is an increase in the capital of the assessee by Rs.2,36,04,624/-. During the course of assessment proceedings, the Id. Assessing Officer asked the assessee to explain the alleged increase in capital to which, assessee replied by giving details of amounts written off during the year which actually reduced the capital of the assessee, but in no way could explain the increase in capital. When the matter came up before the Id. CIT(A), assessee again furnished the same details and along with the details filed before the Assessing Officer, also gave details of advance from various customers appearing in the books for FY 2011-12 and Id. CIT(A) has dealt with the same by giving following findings:-

“I have carefully gone through the assessment order, the observations of the A.O. and the arguments and contentions of the appellant.

It is seen that in the scrutiny assessment for A.Y. 2012-13, the A.O. had accepted the following advances taken from various customers as mentioned in the following table:-

Sl. No.	Project	Rs.
142	Laxminagar Colony, Kol.-74	44,14,700/-
156	Laxminagar Colony, Kol-74	72,86,420/-
153C	Laxminagar Colony, Kol-74	27,00,235/-
147	Devinibas Road, Kol- 74	22,08,850/-
45	R.N. Guha Road, Kol- 74	5,93,81,896/-
249	Laxminagar Colony, Kol-74	8,96,430/-
	Total :-	7,68,88,531/-

The A.O. passed the Assessment Order for A.Y. 2012-13 on 27.03.2015 and its effect has been Riven by the appellant in the books of account for the Assessment Year 2015-16.

It is seen that to give effect of the said order the appellant had written off the advances from the customer against the work in Progress for the year, and added the balance to the capital Account of the Proprietor, being the income which had been_ assessed in A.Y. 2012-13 and accepted by the appellant.

As the advances taken from various parties amounted to Rs. 7,68,88,531/- and the amount added back as additional turnover of Rs.5,22,93,078/- by the A.O.. the Differential amount of u/s. 2,45,95,453/- has been taken by the appellant in his Capital Account.

It is also observed that the appellant had written off Rs. 33,18,078/- during the Assessment Year. Therefore, the net addition to the capital account comes out to Rs. 2,12,77,375 (Rs. 2.45.95,453 - Rs. 33,18,078). However, the appellant has added Rs. 2,36,04,624 back in his capital account, whereas Rs. 2,12,77,375/- was the net addition to the Capital Account as a resultant of giving effect to the assessment order of Assessment Year 2012-13 which was passed by the A.O. on 27.03.2015 and not contested by the appellant.

Therefore, the difference of Rs. 2,36,04.624/- and Rs. 2,12,77,375 which comes out to Rs. 23.72,249/- is the amount which has been shown by the appellant in excess.

Therefore, the addition of Rs. 23,72,249/- made by the A.O. is confirmed and the appellant gets a relief of Rs. 2,12,77,375/- effect has been given by the appellant in the books of account for the Assessment Year 2015-16. "

9. From perusal of the above details and also considering the fact that the assessee has not furnished financial statements for Assessment Year 2012-13 and 2015-16 and copies of the assessment order for Assessment Year 2012-13, we on the basis of the findings of Id. CIT(A) in the impugned year, notice that the issue raised by the Assessing Officer about increase in capital has not been addressed in a correct manner. On the one hand, there is a detail of write off of old balance which included advance given as well as investment in shares. On the other hand, advance from customers have been adjusted against the turnover which the Id. Assessing Officer increased while assessing the

income for Assessment Year 2012-13. But there is a difference between the said adjustment and the accounting treatment of such difference is also not clear from the finding of the ld. CIT(A).

10. Under these given facts and circumstances, we find that the order of the ld. CIT(A) is not addressing the issue of increase in capital during the year and a proper re-conciliation statement depicting the details of capital account for the year under appeal needs to be looked into. We, therefore, are of the considered view that the issues needs to be remitted back to the Assessing Officer before whom, the assessee shall furnish proper details to explain the alleged issue of increase in capital during the year with proper details and financial statements. Thus, all the issues raised in the appeal of the revenue as well as in the cross-objection of the assessee are restored back to the file of the Assessing Officer.

11. In the result, both the appeal of the revenue as well as the cross-objection filed by the assessee are allowed for statistical purposes.

Order pronounced in the Court on 6th September, 2023 at Kolkata.

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

Kolkata, Dated 06/09/2023

**SC Sp.P.*

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata